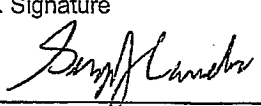
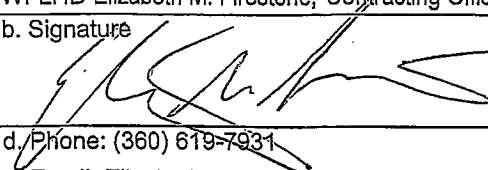


Award 207-06

DENALI COMMISSION AGREEMENT Project: <u>City of King Cove Street Improvement</u> AK EMK 2005(1)		Denali Commission Agreement No: City of King Cove – 2006-1 Other Agency's Agreement No: <u>DTFH70-06-X-50005</u>
(check one) <input checked="" type="checkbox"/> Denali Commission is the Requesting Agency <input type="checkbox"/> Denali Commission is the Servicing Agency		EFFECTIVE DATE: <u>See Block 8c, Signature Date</u> EXPIRATION DATE: <u>May 30, 2008</u>

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1. AGREEMENT. This Reimbursable Agreement (including the attached standard conditions) constitutes the entire agreement between the requesting agency and the servicing agency.			
2a. AUTHORITY OF REQUESTING AGENCY: (check all that apply) <ul style="list-style-type: none"> <input type="checkbox"/> 23. U.S.C. 204, Highways, Federal Lands Highway Program. (Applies when WFLHD is the requesting agency and state agencies, civil subdivisions of a state, or Tribes will be performing services relating to planning, research, engineering, construction of roads/bridges, or transit facilities within public lands/NPS/Indian reservations.) <input type="checkbox"/> 31 U.S.C. 1535, The Economy Act (Applies when 23 U.S.C. 308 does not apply. Authorizes one federal agency to secure items/services from another federal agency.) <input type="checkbox"/> Other. _____ 			
2b. AUTHORITY FOR SERVICING AGENCY: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> 23. U.S.C. 308, Highways, Cooperation with Federal and State Agencies & Foreign Countries. (Applies when WFLHD is the Servicing Agency who will be performing engineering or other services to another Federal agency or to State/local government agencies.) <input type="checkbox"/> Other. _____ 			
3a. REQUESTING AGENCY ADDRESS DENALI COMMISSION 510 "L" Street, Suite 410 Anchorage, Alaska 99501		3b. SERVICING AGENCY ADDRESS Western Federal Lands Highway Division 610 East Fifth Street Vancouver WA 98661-3801	
4a. Denali Commission Accounting & Appropriation Data:		4b. SERVICING AGENCY Accounting & Appropriation Data: 1517020200501 310.00 15F0.02	
5. FUND AMOUNT Amount Obligated by this Action: <u>\$1,200,000.00</u>		6. PAYMENT AND BILLING The other party to this agreement is a: (Check one) <input checked="" type="checkbox"/> Federal Agency. Bill via Interagency Payment and Collection (IPAC) to Requesting Agency's Location Code (see block 7a or 7b, as applicable.) <input type="checkbox"/> Other than a Federal Agency. Agencies must submit an acceptable invoice in a format and frequency designated in Section IV. See "Financial Administration" portion of this document for further details.	
7a. WFLHD FINANCE BILLING INFORMATION <ul style="list-style-type: none"> 1. 8-digit Agency Location Code (ALC): <u>95-67-0000</u> 2. DUNS #: <u>029-585-416</u> 3. Tax ID #: <u>92-0173238</u> 4. Finance Office Contact: <u>Corrine Elio</u> 5. Finance Phone: <u>(907) 271-1414</u> 6. Finance FAX: <u>(907) 271-1415</u> 7. Finance email : <u>celio@denali.gov</u> 		7b. SERVICING AGENCY FINANCE BILLING INFORMATION <ul style="list-style-type: none"> 1. 8-digit Agency Location Code (ALC): <u>69-05-0001</u> 2. DUNS #: <u>928-338-219</u> 3. Tax ID #: <u>53-0204534</u> 4. Finance Office Contact: <u>Jan Palmer</u> 5. Finance Phone: <u>(360) 619-7624</u> 6. Finance FAX: <u>(360) 619-7945</u> 7. Finance email : <u>jan.palmer@fhwa.dot.gov</u> 	
8a. Denali Commission APPROVAL (Name & Title - (type or print)) Denali Commission Federal Co-chairperson George Cannelos		9a. OTHER AGENCY APPROVAL (Name & Title - type or print) WFLHD Elizabeth M. Firestone, Contracting Officer	
b. Signature 		c. Date <u>8/14/06</u>	
b. Signature 		c. Date <u>8/16/06</u>	
d. Phone : (907) 271-1414 Email : <u>gcannelos@denali.gov</u>		d. Phone: (360) 619-7931 Email: <u>Elizabeth.Firestone@fhwa.dot.gov</u>	

DENALI COMMISSION AGREEMENT Project: <u>City of King Cove Street Improvement</u> <u>AK/EMK-2005(1)</u>	Denali Commission Agreement No: <u>City of King Cove – 2006-1</u> Other Agency's Agreement No: <u>DTFH70-06-X-50005</u>
(check one) <input checked="" type="checkbox"/> Denali Commission is the Requesting Agency <input type="checkbox"/> Denali Commission is the Servicing Agency	EFFECTIVE DATE: <u>See Block 8c, Signature Date</u> EXPIRATION DATE: <u>May 30, 2008</u> <div style="text-align: right;">Page 2 of 8</div>

Summary: Denali Commission has agreed to contribute up to \$1.2 Million toward the development of the City of King Cove. Of this \$50,000 may be applied to toward Project Development Activities, with the balance of funds only used for Construction.

Scope: See King Cove Signed Project Agreement. Unsigned shown here:

Project Agreement

City of King Cove

(City Street Paving and Ram Creek Bridge Construction)

King Cove, Alaska

State: Alaska

Project Name: King Cove City Street Project (High Priority Project NO. 3679 [HPP], Denali Commission, Agdaaqu Tribal Council of King Cove [ATC], and City of King Cove [City]).

Project Location: This Project agreement covers project development, including funding commitments, environmental clearance and design for grading and surfacing, construction of a new bridge or fish passage culverts at Ram Creek, and construction of drainage works to control a side hill.

Parties to the Agreement:

City of King Cove, Alaska (City);
 Denali Commission;
 Agdaaqu Tribal Council of King Cove [ATC];

And

U.S. Department of Transportation
 Federal Highway Administration
 Western Federal Lands Highway Division (WFLHD)

Purpose of this Agreement: This Agreement documents the intent of the parties and clarifies the responsibilities of each for the funding, environmental analysis, technical studies and investigations, preliminary through final design work, and construction award and administration for the projects.

Authority: This Agreement is entered into between the undersigned parties pursuant to the Transportation Bill "SAFETEA-LU – HPP 3679" and the appropriation of funds in the FY 2005, 2006, 2007, 2008, and 2009 Department of Transportation Appropriations Act for a project described as the "City of King Cove/ Cold Bay". Research (Letter attached from City of Cold Bay Mayor stating Earmark Funds are not intended for Cold Bay) established that the intent of Congress was for the appropriated funds to be used to for the City of King Cove Street Improvement project. These funds were appropriated as an "earmark" within the SAFETEA-LU HPP program. The approved earmarked funds total \$3,700,000, and require a local 9.03% match (\$334,100). This match will come entirely from the Denali Commission Funding identified in this agreement.

Denali Commission Resolution Number 06-17 passed May 23, 2006 established the intent of the Denali Commission to allocate funds to WFLHD for the construction and design phases for the King Cove Street Project. The approved fund total is \$1,200,000.

Funds apportioned for this project must be spent on a public road, operated by a public organization with the authority to take a public road jurisdictional role. All projects constructed with federal funding must comply with federal requirements including the compliance with the National Environmental Policy Act (NEPA). A range of reasonable alternatives will be evaluated for public comment as required by NEPA regulation. Amendments to the

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scope of this project agreement may be required dependent upon the decision of the NEPA document. Modifications to this agreement will be approved by an amended agreement signed by all parties.

Description of Work: The scope of work for the project includes the following work and as further described by specific project below. Roles of the parties to this agreement are contained in following sections of this document.

1. Location verification of proposed improvements,
2. NEPA environmental clearance work and environmental document completion,
3. Technical studies or investigations as necessary (i.e. geotechnical, hydraulic, etc.),
4. Preliminary through final design, and
5. Construction award and administration

City Street Paving – This project involve upgrading all 4.3 miles of the City Street system in downtown King Cove, including a new bridge or fish passage culverts over Ram Creek. The upgrades consist of constructing major traffic safety realignments with increased road widths, adding pedestrian safety improvements, improving drainage, utility relocations, purchasing of right of way, erosion control measures, and asphalt paving.

The HPP and other funds currently available aren't anticipated to cover the estimated construction cost. Additional funding will most likely be needed and it will be the City's responsibility to bring additional funding sources to the project, or the scope of work will need to mutually reduce to bring the projected project cost inline with available funding allowances.

Design Standards: Use the existing alignment of the roadways as the template for design with on exception for the approach work to and from Ram Creek. The existing roadway dimensions should be used for environmental clearance, and for final design and construction of the City streets. US Customary (English) units of measure will be utilized, use WFLHD Special Contract Requirements, WFLHD bid schedule, and FP03.

Project Development: WFLHD is responsible for obtaining environmental clearance for the proposed roadway improvements for King Cove City Streets Project. That work includes completion of the environmental document and all associated environmental studies, and preliminary design work as needed for environmental clearance. For the City street improvements, the:

- City of King Cove will contract (up to but not exceeding \$200,000) for the entire road design, hydraulic design at Rams Creek, geotechnical drilling at Rams Creek, and the entire design package (cost estimate, special provisions, construction schedule, cost estimate, and final plans) preparation. These services will be documented and qualify as fulfilling a portion of the local match requirement. The remaining local match will be from the Denali Commission funding applied to this project.
- WFLHD will provide:
 - A design oversight engineer to assist the City with their A/E consultant on the preparation of plan package;
 - Perform the geotechnical engineering for the Rams Creek Bridge;
 - Perform the final bridge design for the Rams Creek Bridge;
 - Prepare the environmental document;
 - Obtain all permits (ATC currently hold Corps of Engineers Permit for the realignment of the road near Ram Creek and adjacent to Heart Lake), and;
 - Advertise the contract, award the contract, and administer the construction contract.

WFLHD will require the construction contractors to obtain all necessary federal, state, or local permits for improvements to the City streets. Once the cost of construction and design work is known for the City Street improvements project, a determination as to what other work may be accomplished with the project funding will be done.

WFLHD will seek input from the City throughout development of the environmental documents. The City may be asked to follow-up on, or provide monitoring of some environmental commitments such as those associated with

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the National Pollution Discharge Elimination System (NPDES) and other permits (i.e. monitoring revegetation). Should assistance be required for any such environmental commitments or tasks, WFLHD will coordinate these topics with the City and document this understanding through an amendment to this Agreement.

Design activities beyond the preliminary work required for alternatives evaluation, and the acquisition of Right-Of-Way, if needed, will not proceed until the project is cleared environmentally through the NEPA process with an environmental document signed by the WFLHD Division Engineer.

A construction contract will not be offered or advertised by the WFLHD until the funding is in place to cover the anticipated construction contract estimate, and all Right of Way acquisitions have been verified.

Project Development Anticipated Schedule:

The following proposed schedule anticipates that the environmental clearance document would be a Categorical Exclusion (CE) for the City street project. If potential additional environmental impacts are found as a result of the environmental studies and public involvement, an EA may be required for the City Streets project. An EA would add approximately one year to the dates shown from completion of the environmental document to beginning of construction. Additional project costs would also be incurred.

Schedule (Based on June 07 for a contract advertisement)

➤ Project Development Schedule-

Note: At this time the critical path is funding allocations. The project will be prepared as quickly as possible, but this schedule is based on when the SAFETEA-LU funds will be reallocated in the spring of 07. If these funds come in sooner or later, the project schedule will be updated.

- Project Kick-Off Spring/Summer 2006
- Complete CE Fall 2006
- Permits Complete Spring 2007
- Complete Final Plans Spring 2007
- Sign-Off contract Spring 2007
- Advertise Contract Spring/Summer 2007 (depends on receiving funds)
- Award Summer 2007
- Construction Summer Fall 2007
- Construction Summer 2008 (paving)

The schedule shown does not include float time for unanticipated additional environmental clearance requirements. Construction timeline if forecasted, this will depend on funding flow, and funding amount.

Right-of-Way: The City will be responsible for the preparation of Right-of-Way (ROW) plans, and plats or legal descriptions of the effected properties, if needed. The Agdaaqux Tribe of King Cove and the City of King Cove will be responsible for all acquisitions. WFLHD will verify that Federal Procurement procedures were followed.

The City of King Cove will obtain necessary rights of way for the projects in a form generally acceptable for a public road. The ROW agreements need to provide for the City of King Cove to construct, operate, and maintain the road with sufficient authorities to regulate traffic, provide safe travel, and protect the road from damage.

Utilities: Relocations will be required as part of the proposed projects. The City will coordinate with any local utilities that are affected by the City streets project, which may include water, sewer, power, cable, phone etc. If the City is unable to facilitate the relocations ahead of construction, steps shall be taken to accommodate this relocation as part of the contact package.

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Construction: As soon as practical after the plans are complete, permit completed, and the funding is in place, WFLHD will either solicit bids or negotiate with a contractor, who meets required qualifications for 8a or Hub Zone, to improve the City streets according to the plans project in accordance with the Federal Acquisition Regulations (48 CFR 1) and the Transportation Acquisition Regulations (48 CFR 12).

Note: Normally, federally funded projects require open bidding competition. Some projects are set aside for small or minority owned businesses (8a) or businesses in economically depressed areas (Hub Zone). The limited current funding received for the project is likely insufficient to build the entire project, thus additional funding sources will need to be developed or the scope of the project reduced.

During the construction phase of the improvement project, WFLHD will assign on on-sight Project Engineer to conduct contract oversight to ensure a quality product. The Project Engineer is WFLHD's designated contact during the construction phase. The City will also designate representatives who will be the primary contacts for WFLHD's Project Engineer.

Upon completion of the construction contract, WFLHD and the City will hold a final inspection. When it is determined that the project has been constructed in substantial conformity with the approved plans and specifications, the City of King Cove will accept the route(s) for maintenance and operation.

Maintenance: The City agrees to exercise operation responsibilities and maintain or cause to be maintained the completed City streets project.

Road maintenance is defined as the act of keeping the road in acceptable condition. Maintenance includes preventive maintenance, normal repairs, replacement of parts and structural components, and other activities needed to preserve the road so that it continues to provide acceptable service and achieves its expected life.

Funding:

- \$3,700,000 of High Priority Funds – the allocation of these funds varies from year to year, but in general, these funds will be allocation 20%/year with a 15% take-down in Washington DC prior to distribution to WFL (note: *The City will advance construction \$1.48M of these funds, but will require repayment in FY08 and FY09 when the allocations are made.*)
- \$1,200,000 of Denali Commission FY 06 funding;
- \$200,000 of City Local Match contribution funds;
- \$1,480,000 of City Advanced Construct funding, that will need repayment when the HPP FY08 and FY09 allocations are made;
- Agdaaqux Tribe of King Cove for \$30,000 to be applied to any Right of Way costs.

Listed below are the currently known fund contributors. The City is activity searching for new funding partners and as the funding contributions change this agreement would be amended to reflect those changes.

- Funding Schedule Anticipated:
 - Earmark Funding Distribution:
 - 05/06 or 40% in June 2006 40% of 3.7M = \$1.48M
 - 07 or 20% in June 2007 20% of 3.7M = \$.74M
 - 08 or 20% in June 2008 20% of 3.7M = \$.74M
 - 09 or 20% in June 2009 20% of 3.7M = \$.74M
 - Denali Commission Funding = \$1.2M in FY06
 - Note, these funds do qualify and cover in its entirety the SAFETEA-LU 9.03% Local Match.
 - Advanced Construct from City Funds remaining 40% of funds in June 2007 40% of 3.7M = \$1.48M

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- City would need the balance of the earmark from 08 and 09 as re-payment for their advance construction contribution.
- City of King Cove Local Fund of \$200,000.
- Total Funds in June 07 = $(\$1.48M + \$0.74M + \$1.48M) * 85\% + \$1.2M + \$200k = \underline{\$4.545M}$

(*Note: AKDOT has informed WFLHD to only realize 85% of earmark)

The funds listed above have been or are forecasted to be allocated to perform the work described in this agreement. It is recognized that this funding amount may not be adequate to complete environmental clearance, design, and construction management and to fully construct. Project needs and costs will need to be re-evaluated as environmental studies and preliminary design work progresses. Cost above the committed funding listed above will be the responsible of the City unless other funding sources are identified (this will include all cost track through construction release of claim).

In the management of this project, WFLHD may issue A/E Task Orders or a Reimbursable Agreement for Project Development activities and will assess a 5% handling fee, unless staff charge actual time. The application of this fee will be determined at the onset of any issued Task Order or Reimbursable Agreement.

III. TERM OF AGREEMENT

The terms and conditions of this agreement shall become effective with and upon execution by Denali Commission Contracting Officer and shall remain in effect through December 31, 2007, unless modified in writing by mutual agreement or terminated by either party upon thirty (30) days written notice. Full credit shall be allowed for each party's reimbursable costs and all non-cancelable obligations properly incurred up to the effective date of termination.

IV. FINANCIAL ADMINISTRATION

A. **Total Agreement Amount:** See block #5, cover page, for funds obligated by this agreement.

Funding Citations: See blocks 4a & 4b. of cover page.

B. **IPAC:** In accordance with the Debt Collection Improvement Act of 1996, all payments between Federal Agencies must be billed via Intra-Governmental Payment and Collections (IPAC). The Agency Location Code (ALC) for Denali Commission, is 95670000. For IPAC payment approval, the Servicing Agency will submit all Billings to the Government with Support Data as costs are billed, and one final and complete billing marked **Final Invoice** for reimbursement of all eligible costs incurred not later than 180 days after satisfactory completion of the work pursuant to the provisions of Title 23 CFR 645.117.

C. **Reimbursable Payment:** The servicing agency is authorized to bill quarterly as costs are incurred and authorized, and should correspond to actual IPAC payment submission. The servicing agency is limited to recovery of actual costs only, with a progress report reflecting the progress to the date of the invoice. The report will note obstacles encountered, suggested solutions, progress to date, and identify costs and expenses as stipulated in the agreed upon cost budget for services rendered or supplies delivered. Include back-up data with each request for payment. Back-up data includes all documents needed to support the requested IPAC reimbursement, such as record of contract payments, receipts, payrolls, and so on.

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Submit cost support documentation and Progress Report to:

Ms. Tessa Rinner,
 Director of Programs Denali Commission,
 Transportation Program Manager
 DENALI COMMISSION
 510 "L" Street, Suite 410
 Anchorage, Alaska 99501

D. Administrative Fee: Unless otherwise explicitly stated in this Agreement, Denali Commission shall not be liable for any additional administrative fees.

V. KEY OFFICIALS

REQUESTING AGENCY – Denali Commission

Contact: Ms. Tessa Rinner
 Title/Department: Director of Programs Denali Commission, Contracting Officer's Technical Representative (COTR)
 Voice: (907) 271- 1414
 Fax: (907) 271-1515
 Email: trinner@denali.gov

SERVICING AGENCY- Western Federal lands Highway Division WFLHD

Contact: Michael Traffalis
 Voice: (360) 619-7787
 FAX: (360) 619- 7846
 Cell: (360) 607-2749
 Email: michael.traffalis@fhwa.dot.gov

VI. SPECIAL PROVISIONS

A. Confidential information

VII. MODIFICATIONS

Any modifications to the Agreement must be made in writing and agreed to by both parties. Such authorizations are not binding unless they are in writing and signed by personnel authorized to bind each of the agencies.

VIII. AGREEMENT COMPLETION

When the Requesting Agency has accepted all deliverables, the Servicing Agency will provide a written project evaluation and final accounting of project costs to the requesting agency contact.

IX. TERMINATION

Either agency may terminate this agreement upon 30-calendar day (or as designated in the statement of work) prior written notification to the other agency. If this agreement is terminated by the Servicing Agency, its liability shall extend only to the release of its work products and related materials to the Requesting Agency by the effective date of termination. If this agreement should be terminated by the Requesting Agency, its liability shall extend only to pay for the actual and reasonable costs of the items/services rendered and the costs of any non-cancelable obligations incurred in accordance with the terms of this agreement prior to the effective date of termination.

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X. Agreement Standard Conditions

Financial

- 1. Funding.** In no case will the Servicing Agency make commitments or expenditures beyond 100% of funds obligated under this agreement as modified.
- 2. Additional funds.** The Requesting Agency and the Servicing Agency shall closely monitor funds. The Requesting Agency may increase the total obligation by modifying this agreement.
- 3. Duration of the agreement.** When agreement performance is expected to extend beyond the funding limits of the Requesting Agency's appropriation, the agreement may be extended provided the agencies have executed a modification using new funding.
- 4. Agreement Closeout.** Upon receipt of the final accounting of project costs, the Requesting Agency will close the Servicing Agency account. The remaining balance in the agreement account will be de-obligated by the Requesting Agency using an agreement modification (see "Agreement Completion" in the Administration portion of these standard conditions.)

Laws

- 5. Compliance with Applicable Laws.** Both parties agree to comply with authorities, laws and regulations cited in this document.
- 6. 508 Compatibility.** Each Electronic & Information Technology (EIT) item/service furnished under this agreement shall comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as updated in 1998.
- 7. Competition Requirements for Servicing Agency.** All acquisitions awarded by the servicing agency in performance of this agreement shall comply with the Competition in Contracting Act (CICA), public law 98-369. (Applicable to agreements with other Federal agency)

Administration

- 8. Responsibilities.** The Requesting Agency COTR and the Servicing Agency designated official shall be responsible for technical oversight of the specified item/service, as set forth in the attached statement of work.

- 9. Third Party Liability.** With respect to third-party liability for acts arising out of the performance of official duties by a government employee of the Servicing Agency, the Servicing Agency undertakes responsibilities for the investigation, adjudication, settlement, and payment of any claim asserted against the United States; except that, in all cases, the responsibility for the investigation, adjudication, settlement, and payment of any claim with respect to third-party liability arising out of the use, damage, or destruction of loaned personal property shall be the responsibility of the particular agency that has custody and control of the said personal property. In addition, the Servicing Agency representative shall have the duty of investigating and reporting, in accordance with the Servicing Agency's regulations and policies, incidents occurring on, or involving that Servicing Agency's real property, and the Requesting Agency agrees to cooperate fully in such investigations.

- 10. Disputes.** Agency employees responsible for the administration of this agreement will be the initial points of contact for any disputes arising under this agreement. Disputes may be submitted in writing to either of these persons. Any disputes that are not resolved at this level may be referred to their respective agency's reviewing official for resolution. Pending the resolution or claim pursuant to this article, the parties agree that performance of all obligations shall be pursued diligently in accordance with terms and conditions of the Agreement.

Other

- 11. Publication or Sharing Results.** If either party publishes or shares any results arising from this agreement, they shall submit a proposed release to the cooperating party for review. Publication may be joint or independent, as agreed upon, always giving due credit to the cooperation and recognizing within proper limits the rights of the individuals doing the work. Software and documents may not be shared or used beyond the scope specified in the Statement of Work.
- 12. Property.** Purchase of equipment required for performance of the work must be authorized by the agreement.
- 13. Travel.** All travel under this agreement shall be in accordance with the Federal Travel Regulations, unless otherwise agreed to by both agencies.